

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7337-2022

Reserved on : 19.12.2022

Pronounced on : 16.01.2023

Mohd. Younus

....Petitioner

VS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.K. Singla, Advocate
for the petitioner

SUDHIR MITTAL, J.

The land in dispute measures 69 bighas 18 biswas and the petitioner alleges himself to be the Mutwalli of Khanqah being Chela of Amanat Ali Shah, the previous Mutwalli. Jamabandi for the year 1981-82 of village Sherwani Kot Tehsil Malerkotla District Sangrur records the name of the owner as “Khanqah biyatmam Amanat Ali Shah Chela Nathu Shah Faqir (Muafidar)” and the column of cultivation records 'self cultivation' Jamabandi for the year 2016-17 also records similar entries. A notification dated 01.05.1971/09.11.1970 (date is not clear from the impugned orders) was issued by the Punjab Wakf Board whereupon the Patwari Halqa entered a mutation in its favour. The petitioner preferred objections before the Assistant Collector 2nd Grade who declared the mutation to be a disputed one and referred the matter to the Assistant Collector 1st Grade Malerkotla. Vide order dated 04.01.2021, the Assistant Collector 1st Grade, Malerkotla sanctioned mutation in favour of the Punjab Wakf Board – respondent No. 5. Appeal filed by the petitioner was dismissed by the Collector vide order dated 27.01.2021 and revision petition filed before the Financial Commissioner was dismissed vide order dated 06.01.2022. These orders are under challenge in the present writ petition.

During the pendency of the revision petition before the Financial Commissioner, lease deed dated 20.04.2021 was executed by respondent No. 5 in favour of the Department of Medical Education and Research, Punjab and the same includes the land in dispute.

It may also be noted that according to the contents of the petition, mutation No. 995 entered in favour of respondent No. 5 on the basis of the very same notification as aforementioned was rejected by the Assistant Collector 2nd Grade vide order dated 13.10.1994 and the same was not challenged by way of appeal or revision. Vide notice dated 17.10.2012 issued under Section 54(1) of the Wakf Act, 1954 (hereinafter referred to as 'the Act') respondent No. 5 directed the petitioner to remove his possession as the same was illegal and unauthorized. Reply dated 03.11.2012 was filed on behalf of the petitioner wherein it was stated that before the year 1900 one Mohd. Ali Khan Sahib Jagirdar was the owner of the property and that the petitioner was in possession as Mutwalli Khanqah. The land was Muafi and possession was as Muafidar. Possession has been open and peaceful as *gair marusi* since a long period of time and, thus, the notice was liable to be withdrawn. The petitioner allegedly continued in possession and false FIR No. 45 dated 20.04.2021 was registered at P.S. Sandaur Sangrur under Sections 447, 511 IPC on the allegation that some known persons (named in the FIR) and some unknown persons had tried to take illegal possession over the land of the Punjab Wakf Board. This led to the filing of a petition before the Wakf Tribunal, Patiala titled ***Mohd. Yunus vs. The Chief Executive Officer, Punjab Wakf Board etc.*** for a declaration of title and for permanent injunction restraining the respondents therein from forcibly dispossessing the plaintiff. Declaration was also sought that notification dated 01.05.1971 was illegal as was mutation No. 2451 sanctioned on 04.01.2021. Consequently, lease agreement dated 20.04.2021 was also illegal. A perusal of this petition shows that Khanqah Balianwali is stated to

be the owner in possession. Muafi was granted in the year 1912. The earliest Mutwalli was Peers Shah who was in control and management of the property followed by his successors.

The word 'Khanqah' means a Monastery or Society where people dedicated to religion reside. In Hindi it can be referred to as 'Dargah'.

Learned counsel for the petitioner has argued that sanctioning of mutation in favour of respondent No. 5 only on the basis of a notification was illegal especially when earlier mutation No. 995 entered on the basis of the same notification had been rejected and the order of rejection was not challenged. Further, as is evident from the jamabandies for the years 1981-82 as well as 2016-17 the petitioner is recorded in possession and no mutation could have been entered without transfer of possession as provided in para 7.17 of the Punjab Land Record Manual. Still further, being Muafi land, the petitioner had become owner thereof by virtue of the provisions of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954 (hereinafter referred to as 'the Pepsu Act'). It has also been submitted that the notification was issued on 01.05.1971 whereas mutation was sought to be entered some times in the year 2019-20. Thus, there was a delay of about 45 years in seeking entry of mutation and the same was barred by limitation. In view of the foregoing submissions, the Courts below were in error in sanctioning the mutation and dismissing the appeal and revision there against.

The question of limitation is being considered first. Section 34 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the 'Punjab Act') stipulates that the Patwari shall enter in his register of mutations every report made to him of any person acquiring rights or title in any property of the concerned revenue estate by virtue of inheritance, purchase, mortgage or otherwise and a report regarding the same has been made to him. The same action can be taken *suo*

moto also on acquiring knowledge. He is also required to enquire into the correctness of entries in the register of mutations and make such order as thought fit with respect to the entry in the annual record of rights. It is, thus, evident that no limitation has been prescribed for making an entry in the register of mutation. Thus, the argument of limitation is liable to be rejected out right. Reliance placed by learned counsel for the petitioner on ***Ranjit Singh vs. Financial Commissioner Revenue, Punjab and others, 1981 PLJ 5*** is misplaced as the said judgment does not lay down that a period of limitation exists. In the said case because delay of over 20 years had taken place in seeking sanction of mutation after execution of a sale deed and civil Court decree, the Financial Commissioner had refused to sanction the mutation as there was no satisfactory explanation for the delay. This Court held that there being no statutory obligation on a revenue authority to sanction mutation after a delay of more than 20 years, the order of the Financial Commissioner could not be said to be without jurisdiction and that the writ petition was not maintainable on the issue of sanction of mutation. Non-existence of a statutory obligation on a revenue official can not be equated with bar of limitation. The argument is, accordingly, rejected.

The issue of mutation No. 995 having been rejected by the then Assistant Collector 2nd Grade, has been explained in the order of the Financial Commissioner wherein the submission made on behalf of respondent No. 5 has been accepted. The submission was that the mutation was rejected for non-prosecution because a particular circular of the Punjab Government had not been annexed. A direction was given that the mutation be presented afresh after adding the circular on the file. Learned counsel for the petitioner could not point out any error in acceptance of the submission and, accordingly, this argument also deserves to be rejected.

Manual is also misplaced. The said para only stipulates that in case of a transfer by way of gift, sale or mortgage, mutation should not be attested unless possession is proved to have actually passed. Where there is a condition of transfer that possession be given, the entry of mutation should be postponed unless there is evidence of possession having been taken. In the present case that is not the situation. Mutation is sought to be entered on the basis of transfer of title by law. Notification on the basis of which the mutation has been entered has been challenged only after registration of FIR dated 20.05.2021. Unless the same is set aside by a Court of competent jurisdiction the declaration made therein will be presumed to be correct. It is not a case of sale or gift or mortgage or where transfer of possession is a condition precedent. Thus, paragraph 7.17 of the Punjab Land Record Manual is not attracted.

Whether possession is with the petitioner or respondent No. 5 is a matter to be decided by the Court of competent jurisdiction where the dispute is pending. Thus, I refrain from making any observations regarding the same.

Finally, I take up the argument raised on the basis of the Pepsu Act. The submission is that the land being Muafi land and that the petitioner being a Muafidar, he has become an occupancy tenant by operation of law and the notification relied upon by the revenue officers is of no consequence. Section 2(h) of the aforementioned Act defines Occupancy tenant as a person who at the commencement of the Patiala and East Punjab States Union (Occupancy Tenants Vesting of Proprietary Rights) Act, 1953 is an occupancy tenant or is deemed to be one. It also includes a person who obtains such a right after the commencement of the said Act whether by any agreement with the landlord, any decree or order of any Court or other authority of competent jurisdiction. There is nothing on record to show that the petitioner was recorded as occupancy tenant at the time of commencement of the aforementioned Act nor is there any decree or order of any

Court or authority of competent jurisdiction granting him the right of occupancy. Thus, the petitioner is not governed by the definition and can not claim to possess the status of an occupancy tenant by operation of law. Reliance upon *State of Punjab and others vs. Gian Chand, 2010(4) PLR 17* as well as *Shivala Vakya Gram Ranle vs. Devi Lal and others, 2018(3) RCR(Civil) 785* is misplaced. In *Gian Chand (supra)* Muafi had been resumed and Wazib-ulurj conferred status of the occupancy tenants upon the occupier of such land. This is not the situation in the present case. In *Shivala Vakya Gram Ranle (supra)* the Shivala was recorded as perpetual tenant in the revenue record and this status was confirmed by civil Court decree. Thus, it was held that under Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 the Shivala was the occupancy tenant. In this case, neither the Punjab Occupancy Tenants (Vesting of Proprietary Rights), Act, 1952 is applicable nor the petitioner has been declared as the perpetual tenant. The argument, thus, deserves out right dismissal.

Other judgments relied upon by learned counsel for the petitioner are not being referred to as they pertain to declaration of property as 'wakf'. As stated earlier the notification aforementioned had not been challenged by the petitioner till after registration of FIR dated 20.05.2021 and as on date no finding can be returned regarding the property being 'wakf' or otherwise. The decision of the Court of competent jurisdiction will finally settle the issue.

In view of the above, the writ petition has no merit and is dismissed.

16.01.2023

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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No